

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

GREATER ST. LOUIS CONSTRUCTION)
LABORERS WELFARE FUND, an employee)
benefit plan, and BRANDON FLINN, RAYMOND)
LINEHAN, JOHN EREMITA, CHARLES)
BEAN, DONALD WILLEY, GARY ELLIOTT,)
JAY SCHULTEHENRICH, DAVID A. GILLICK,)
BRAD GRANT, RICH LEDBETTER, ADAM)
KNOEBEL and NORMAN MERLO, Trustees of the)
Greater St. Louis Construction Laborers Welfare Fund,)
and CONSTRUCTION LABORERS PENSION)
TRUST OF GREATER ST. LOUIS, an employee)
benefit plan, and, JEFFREY O'CONNELL, RICHARD)
McLAUGHLIN, JOHN EREMITA,)
CHARLES BEAN, DONALD WILLEY, GARY)
ELLIOTT, JOSEPH W. BEETZ, JOSEPH LERITZ,)
DOUG WACHSNICHT, JOE HOETTE, WILLIAM L.)
LUTH and DONALD C. GRANT, Trustees of the)
Construction Laborers Pension Trust of Greater St.)
Louis, and ST. LOUIS VACATION FUND –)
VACATION PLAN, an employee benefit plan, and)
GARY ELLIOTT, BRANDON FLINN, JOHN)
EREMITA, JAY SCHULTEHENRICH, NORMAN)
MERLO and WILLIAM L. LUTH, Trustees of the)
St. Louis Vacation Fund – Vacation Plan, and)
AGC–EASTERN MISSOURI LABORERS' JOINT)
TRAINING FUND, an employee benefit plan, and)
LARRY BLOOMER, DONALD WILLEY,)
PERRI PRYOR, GARY ELLIOTT, RICHARD)
McGUIRE, BRANDON FLINN, JOHN B.)
MORGAN, PHIL HOCHER, ROBERT J.)
WESOLICH, FRANCIS R. WOJEHOWSKI,)
CLIFF LAND, and JOHN J. SMITH, SR.,)
Trustees of the AGC–Eastern Missouri Laborers')
Joint Training Fund, and LOCAL UNION NOS.)
42-53-110, LABORERS INTERNATIONAL)
UNION OF NORTH AMERICA, AFL-CIO,)
labor organizations,)

Plaintiffs,)

v.)

Case No. _____

DUNEMAN DEMOLITION, INC., a Missouri)
corporation,)
)
Defendant.)

COMPLAINT

Come now plaintiffs, by and through their attorneys, and for their cause of action against defendant state:

1. Plaintiff, Greater St. Louis Construction Laborers Welfare Fund, hereinafter referred to as “the Welfare Fund”, is an employee benefit plan within the meaning of Sections 3(1), (3), 502 and 515 of the Employee Retirement Income Security Act of 1974, as amended 29 U.S.C. §§1002(1), (3), 1132 and 1145. Plaintiffs Brandon Flinn, Raymond Linehan, John Eremita, Charles Bean, Donald Willey, Gary Elliott, Jay Schulthenrich, David Gillick, Brad Grant, Rich Ledbetter, Adam Knoebel, and Norman Merlo, and are the duly designated and acting Trustees of the Welfare Fund, and are fiduciaries within the meaning of Sections 3(21)(A) and 502 of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§1002(21)(A) and 1132.

2. Plaintiff Construction Laborers Pension Trust of Greater St. Louis, hereinafter referred to as “the Pension Trust,” is an employee benefit plan within the meaning of Sections 3(2)(A), (3), 502 and 515 of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§1002(2)(A), (3), 1132 and 1145. Plaintiffs Jeffrey O’Connell, Richard McLaughlin, John Eremita, Charles Bean, Donald Willey, Gary Elliott, Joseph W. Beetz, Joseph Leritz, Doug Wachsnicht, Joe Hoette, William L. Luth, and Donald Grant, and are the duly designated and acting Trustees of the Pension Fund, and are fiduciaries within the meaning of

Sections 3(21)(A) and 502 of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§1002(21)(A) and 1132.

3. Plaintiff, St. Louis Vacation Fund – Vacation Plan, hereinafter referred to as “the Vacation Fund,” is an employee benefit plan within the meaning of Sections 3(2)(A), (3), 502 and 515 of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§1002(2)(A), (3), 1132 and 1145. Plaintiffs Gary Elliott, Brandon Flinn, Jay Schulteheinrich, Normal Merlo, John Eremita, and William L. Luth are the duly designated and acting Trustees of the Vacation Fund, and are fiduciaries within the meaning of Sections 3(21)(A) and 502 of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§1002(21)(A) and 1132.

4. Plaintiff, AGC - Eastern Missouri Laborers Joint Training Fund, hereinafter referred to as “the Training Fund” is an employee benefit plan within the meaning of Sections 3(1), (3), 502 and 515 of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§1002(1), (3), 1132 and 1145. Plaintiffs Larry Bloomer, Donald Willey, Perri Pryor, Gary Elliott, Richard McGuire, Brandon Flinn, John B. Morgan, Phil Hochoer, Robert J. Wesolich, Francis R. Wojehowski, Cliff Land, and John J. Smith, Sr., are the duly designated and acting Trustees of the Training Fund, and are fiduciaries within the meaning of Sections 3(21)(A) and 502 of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§1002(21)(A) and 1132.

5. Local Unions Nos. 42, 53 and 110, Laborers International Union of North America, AFL-CIO, hereinafter referred to as “the Union,” are labor organizations representing employees in an industry affecting commerce within the meaning of Sections 2(4), (5), (6), and

(7) of the National Labor Relations Act, as amended, 29 U.S.C. §§152(4), (5), (6), and (7), and Section 301 of the Labor Management Relations Act of 1947, as amended 29 U.S.C. §185.

6. Defendant Duneman Demolition, Inc. is a Missouri corporation in good standing, and is an employer in an industry affecting commerce within the meaning of Sections 3(5), (11), (12), and 515 of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§1002(5), (11), (12) and 1145, and Sections 2(2), (6) and (7) of the Labor Management Relations Act of 1947, as amended, 29 U.S.C. §§152(2), (6) and (7), having engaged in business within this judicial district.

7. This Court has jurisdiction by reason of Sections 502(a)(3), (ii) and 515 of the Employee Retirement Income Security Act of 1974, as amended, §§1132(a)(3)(ii) and 1145, and Section 301(a) of the Labor Management Relations Act of 1947, as amended, 29 U.S.C. §185(a), in that plaintiff Trustees are fiduciaries who seek to enforce the provisions of their employee benefit plans, and the Union is suing for violation of a contract with defendant.

8. At all times material, defendant was bound by the provisions of a collective bargaining agreement requiring monthly payments to the Welfare, Pension, Vacation and Training Funds in specified amounts and the submission of monthly report forms. Said collective bargaining agreement and the plans adopted by the Trustees of the Welfare, Pension and Training Funds also provide that the Trustees shall be permitted to perform a financial examination of defendant's books and records periodically to insure that payments have been properly made in accordance with the terms of the collective bargaining agreement.

9. Pursuant to the terms of the collective bargaining agreement, liquidated damages of 20% are owed on all delinquent contributions.

10. Defendant has failed and refused to submit contributions for the month of October 2013 in the amount of at least \$32,496.47. Defendant also owes the Funds at least \$12,611.96 in liquidated damages.

11. It is impossible to accurately determine the amounts owed to plaintiffs absent a financial examination for the period of May 1, 2010 to the present.

12. Plaintiffs are entitled to recover interest, liquidated damages, accounting fees, costs and reasonable attorneys' fees pursuant to Section 502(g) of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1132(g), and pursuant to the collective bargaining agreement.

WHEREFORE, plaintiffs pray the Court as follows:

1. For an order requiring defendant to submit to a financial examination for the period of May 1, 2010 to the present;
2. For a judgment based on the results of that financial examination;
3. For interest, costs, accounting fees, and reasonable attorneys' fees pursuant to 29 U.S.C. § 1132(g);
4. For such other and further relief as the Court may consider appropriate under the circumstances.

Respectfully submitted,

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Attorney for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was mailed, by certified mail, return receipt requested, to the Secretary of Labor, United States Department of Labor, P.O. Box 1914, Washington, D.C. 20013 and to the Secretary of Treasury, United States Treasury, 15th and Pennsylvania Avenue, Washington, D.C. 20220, on January 8, 2014.